IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 455 OF 2005

SHRI NAMDEV NAKUL GAONKAR AND ANR., ...Petitioners

Versus

SHRI KRISHNA GAONKAR(SIN.DEC.) THROUGH L.RS., ...Respondents

Shri Deepak Gaonkar, Counsel for the Petitioners
Ms. K. Chodankar, Addl. Govt. Advocate for Respondent nos. 2 to 6.

Coram:- D. D. SINHA, J.

Date:- 13th December, 2005

P.C.

Heard Shri Deepak Gaonkar for the petitioners. The Writ Petition is directed against the Order dated 23.08.2005, passed by the Adhoc Additional District Judge, whereby the counter claim of the petitioner under Order VIII Rule 6-A of the Code of Civil Procedure was dismissed on the ground that there cannot be a counter claim against the co-defendant. The Counsel for the petitioners tried to canvass before me that under the scheme of Order VIII Rule 6A, the counter claim is filed against the plaintiff only and, therefore,the observations of the Trial Court in this regard are incorrect. Considered the contentions canvassed by the learned Counsel, who is unable to point out any averment in the Writ Petition that the counter claim filed by the petitioner in the suit is against the plaintiff. In the absence of any averment in the petition, it is difficult to accept the oral statement made by the learned Counsel for the petitioner in this regard. The learned Counsel for the petitioners is also unable to produce anything on record to show that the counter claim was against the plaintiff. On the other hand, the perusal of the impugned order shows that

the counter claim filed by the petitioner (defendant)is against the co-defendant hence in view of Order VIII Rule 6A of the Code of Civil Procedure is not maintainable.

In the backdrop of the above referred facts, the impugned Order is just and proper, needs no interference, hence Writ Petition dismissed.

D. D. SINHA, J.

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